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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,953	02/22/2002	William J. Hennen	2820-4428.2US	6427

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Durham, Jones & Pinegar --
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EXAMINER	
CHEN, STACY BROWN	
ART UNIT	PAPER NUMBER
1648	

NOTIFICATION DATE	DELIVERY MODE
08/17/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@djplaw.com
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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/081,953	HENNEN ET AL.	
	Examiner	Art Unit	
	Stacy B. Chen	1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet..

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Stacy B Chen/
Primary Examiner, Art Unit 1648

Continuation of Item 11.

Claims 1-16 and 18-22 remain rejected under 35 U.S.C. 102(e) as being anticipated by Dopson (PGPub 2002/0044942A1, "Dopson", published April 18, 2002, with priority to provisional application 60/233,400, filed September 18, 2000), for reasons of record. Applicant indicates in the response filed August 2, 2010, that an affidavit may be filed once all other issues in this application are resolved.

Claims 1-16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tokoro (US Patent 5,080,895) in view of Kirkpatrick et al. (US Patent 5,840,700, "Kirkpatrick"), for reasons of record. Applicant's arguments have been carefully considered but fail to persuade. Applicant's arguments are directed to the following:

Applicant points out that Tokoro admits that "the immunological functions of the transfer factor-like component…are not known", see Tokoro, col. 7, lines 44-47. Applicant argues that in view of the lack of knowledge of the immunological function of Tokoro's transfer factor-like component, one would not have been able to predict that it would be useful to induce a T-cell mediated immune response.

In response to Applicant's argument, the Office agrees that Tokoro did not know the exact immunological functions of their transfer factor-like fraction. However, that statement by Tokoro is simply saying that the particulars of how the transfer factor-like component impacted the immune system were not known, not that it was not useful to a subject's immune system. In col. 7, lines 30-43, the transfer factor-like component is clearly disclosed as useful for treatment of diseases and additives in food.

Applicant maintains the position that the predictability of whether an antigen would induce a T-cell response was low.

In response to Applicant's argument, the Office recognizes that not every antigen will induce a T-cell response, such as certain bacterial antigens suggested by Tokoro that do not induce T-cell mediated immunity in hens. The Office also acknowledges that a T-cell response is critical to the production of transfer factor. However, Tokoro does not have to teach that the antigens elicit a T-cell response. The obviousness rejection relies on Tokoro's description of a transfer factor-like component that is specific for an antigen from a pathogen, in combination with a reference that teaches an antigen/pathogen that is known to induce T-cell mediated immunity in an animal. For example, Tokoro fails to disclose EBV-specific transfer factor. However, Tokoro suggests the use of virtually any antigen of choice for the production of a substance containing transfer factor-like component, including those other than intestinal infectious diseases (col. 4, lines 16-18). Antigens from pollen, bacteria, viruses, molds, allergens, blood from affected animals, sperm and toxins may be used in the production of transfer factor-like component (col. 4, lines 53-57). One would have been motivated to select an antigen from a clinically significant pathogen such as Epstein-Barr virus, a known pathogen for which a vaccine is desirable to prevent mononucleosis (Kirkpatrick, col. 5, lines 7-30). By immunizing hens with an EBV antigen, Tokoro's hens would have produced transfer factor-like component specific for EBV.